IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2183 OF 2006
IN
SALES TAX REFERENCE (L) NO.12 OF 2006
IN
REFERENCE APPLICATION NO.122 OF 2002

The Commissioner of Sales Tax)
Maharashtra State, Mumbai)
having his office at Vikrikar)
Bhavan, Mazgaon, Mumbai 400 008).. Applicant.

V/s.

N.H. Polymers)
Solapur).. Respondent.

Mr.V.A. Sonpal, AGP for the Applicant.

Mr.B.C. Joshi with Mr.P.C. Joshi & Ms.N.R. Badheka and Mr.R.S. Naik for the respondent.

CORAM : F.I. REBELLO &
J.P. DEVADHAR, JJ.

DATED : 2ND NOVEMBER, 2007.

ORAL JUDGMENT : (Per F.I. Rebello, J.)

1. The respondents are in the business of manufacturing synthetic adhesives and textile binders. They applied to the Commissioner of Sales Tax for determination of rates of Sales Tax in respect of items as enumerated in the application. The Commissioner of Sales Tax by an order dated 31-1-1998 held that the items are covered by entry C-II 152, the residual entry liable to sales tax at 13%. The respondents preferred an Appeal being Appeal No.36 of 1998 before the Maharashtra Sales Tax Tribunal, Mumbai. By an order dated 31-8-2002,

the Tribunal allowed the appeal and held that the items as enumerated in para No.3 hereinabove are covered under entry C-I and thus liable to sales tax at 4%.

2. The applicant herein, thereafter applied by Reference Application No.122 of 2002 to the Maharashtra Sales Tax Tribunal to frame the questions of law and refer them to this Court. By order dated 15-6-2005, the Tribunal rejected the said Reference Application No.122 of 2002.

The applicant aggrieved by the said order has preferred this Application to this Court. The application has been filed beyond the period of 90 days as required by the first proviso to sub-section (1) of Section 61 of the Bombay Sales Tax Act, 1959, which hereinafter shall be referred to as the Act. There is a Motion for condonation of delay.

3. Respondents have raised a preliminary objection to the Court exercising jurisdiction to condone the delay. It is their submission that as there is no power in this Court to condone the delay in making the application under the provisions of the Bombay Sales Tax Act (hereinafter referred to as the Act), the same is not maintainable and consequently has to be dismissed. The Applicant on

the other hand contends that the application is to the ‘Court’ and hence the provisions of Section 5 of the Limitation Act, 1963 will apply.

4. The question for consideration is, whether Section 5 of the Limitation Act would be applicable, when an application is moved under the first proviso to sub-section (1) of Section 61 of the Act to this Court.

5. At the threshold, we may point out that during the lifetime of the Act of 1959 till its repeal and substitution by the Maharashtra Value Added Tax, 2002, it appears that this question was not raised and consequently not decided by this Court. Learned Counsel point out that the Court has been entertaining applications for condonation of delay in reference applications and there is no decided case law on this point. The issue, therefore, will have to be considered on the touchstone of the provisions of the Act and the law on limitation as understood till date in respect of this Act. In Mehta Construction Company V/s. State of Maharahstra & Another [48 STC 388], this Court held that the provisions of Section 5 of the Limitation Act would not apply to proceedings before a Tribunal as it was not a Court. In Fairgrowth Investments Ltd., (2004) 122 Cases 683 (SC), the

Supreme Court has held that the word exclusion also includes ‘exclusion by necessary implications.’

6. To answer the issue, we may refer to some of the provisions which are required to be considered under the Act.

> S.59. Application of sections 4 and 12 of Limitation Act. - In computing the period laid down under section 55, 57, 61 the provisions of sections 4 and 12 of the Limitation Act, 1963, shall, so far as may be, apply. (Emphasis supplied)
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> S.60. Extension of period of limitation in certain cases.- An Appellate Authority may admit any appeal under section 55 after the period of limitation laid down in the said section, if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within such period.
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> Explanation. - For the purposes of this section, when an appeal is preferred under section 55 after the said period of limitation laid down in that section, the ground that the appellate came to know of any judgment, decision or order of any Court, Tribunal or other authority after the expiry of the period of limitation aforesaid (whether such judgment, decision or order was delivered or made before or after the expiry of that period), shall not be deemed to constitute a sufficient cause.
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> S.61 Statement of case to the High Court. - (1) Within ninety days from the date of the communication of the order of the Tribunal, passed in appeal being an order which affects the liability of any person to pay tax or penalty or interest or to forfeiture or any sun or which affects the recovery from any person of any amount under section 39, that person, the Additional Commissioner of Sales Tax having jurisdiction over the whole of the State or the Commissioner, may by application in writing (accompanied, where the application is made by that

person, by a fee of one hundred rupees) require the Tribunal to refer to the High Court any question of law arising out of such order; and where the Tribunal agrees, the Tribunal shall, as soon as may be after the receipt of such application, draw up a statement of the case and refer it to the High Court :

Provided that, if in the exercise of its power under this sub-section the Tribunal refuses to state the case which it has been required to do, on the ground that no question of law arises, that person, the Additional Commissioner of Sales Tax having jurisdiction over the whole of the State, or as the case may be, the Commissioner, may, within ninety days of such refusal, either withdraw his application (and if he does so any fee paid shall be refunded), or apply to the High Court against such refusal.

. Provided further that, the Tribunal may refuse to refer the case to the High Court, if the person or, as the case may be, the Commissioner fails to submit the paper book and other documents required by the Tribunal, within a period of three months from the date of order of the Tribunal served on that person or, as the case may be, the Commissioner.

(2) to (6) -------

The other relevant provisions which has to be answered, is Section 29(2) of the Limitation Act, 1963, which reads as under :

"Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by

such special or local law."

7. On behalf of the respondents, it is submitted that the Act has been repealed with effect from 1-4-2005 on introduction of Value Added Tax Act, 2002. The Act, it is submitted, is a special law providing for a period of limitation different from the period prescribed under the Limitation Act, 1963 and, therefore considering Section 29(2) of the Limitation Act, only those provisions would be applicable which are specifically made applicable. Since the special law prescribes the period of limitation, the Sales Tax Act would be governed by the specific provisions of the Act of 1959. Section 5 of the Limitation Act would not be applicable, considering the provisions of Section 59 and 60 of the Act of 1959, which excludes expressly or by necessary implication, the application of the provisions of the Limitation Act except Section 4 and 12. Section 59 of the Act provides that in computing the period of limitation, only the provisions of Section 4 and 12 of the Limitation Act in so far as they relate to proceedings under the provisions of Section 55, 57 and 61 will apply. A literal reading of Section 59 can only lead to the conclusion, that all proceedings under Section 61, including under sub-section (1) or under its proviso, only the provisions of Sections 4 and 12 of

the Limitation Act would apply. Therefore, in such proceedings, the application of Section 5 of the Limitation Act is expressly excluded. Section 60 of the Act of 1959 confers power for extension of period of limitation only on an appellate authority while admitting an appeal under Section 55. Considering the language of Section 60 and the object behind enacting it, an inference can be drawn that Section 60 was enacted to exclude the application of Section 5 of the Limitation Act. By necessary implication, therefore, it will also impliedly exclude the application of Section 5 of the Limitation Act to an application for reference under the Act submitted either to the Tribunal or the Court under the proviso to Section 61. Considering the specific provisions of the special law, the ratio of the Supreme Court judgment in the case of Union of India Vs. M/s. Popular Construction Company [2001 (8) S.C.C. 470] and the decision in the case of Commissioner of Sales Tax, U.P. V/s. M/s.Parson Tools & Plants [35 STC 413] is squarely applicable.

8. On the other hand on behalf of the applicants, learned A.G.P. contends that the contention raised on behalf of the respondents are devoid of merit. It is submitted that it is a settled position in law that the power to condone

delay is not available under Section 5 read with Section 29(2) of the Limitation Act to a forum which is not a Court. In Nityanand M. Joshi V/s. Life Insurance Corporation of India, AIR 1970 SC 209, the Supreme Court has held that the provisions of Section 5 only apply to applications to Courts and would not be applicable to any Administrative Authority or Tribunal or Forum which is not Court. In the context of this settled position of law, in every statute, for any proceedings where period of limitation is prescribed, if the legislature intended any period of limitation in respect of some proceeding before a forum other than a Court, the statute provided for condonation of delay in certain circumstances. Under the provisions of Act, any order passed by authorities under Sections 33, 35 and 57 is subject to an appeal before the forum as provided under Section 55. The legislature being conscious of non-applicability of section 5 of the Limitation Act to these forums, specifically clothed the appellate authorities under the Act, with the power to condone delay as provided under section 60. Apart from making provisions akin to section 5 of the Limitation Act under Section 60, the legislature was also aware of the non-applicability of other provisions of Limitation Act for calculation of period of limitation, and was thus required to confer power on the forum akin to other provisions

of the Limitation Act to meet the ends of justice. The legislature identified sections 4 and 12 of the Limitation Act. The Act is a rational, just and reasonable legislation. In calculating the period of limitation by virtue of section 59, provisions of section 4 and 12 of the Limitation Act have also been made applicable. It is submitted that the provisions of Section 55, 59 and 60 of the Act of 1959 are a composite and complete code in itself, applicable to forums which are not Courts. Insofar as the High Court is concerned as it is a Civil Court, the provisions of the Limitation Act would be applicable. Once there is jurisdiction it is open to the Court to condone delay by exercising its jurisdiction provided sufficient cause is made out. Reliance is placed on various judgments, which we shall advert to in the course of our discussion.

9. The basic question to be answered, considering that the High Court is a Civil Court, whether the provisions of section 4 to 24 of the Limitation Act would apply, in spite of specific applicability of only the provisions of section 4 and 12 of the Limitation Act to an application under section 61 of the Act. Under Section 29(2) of the Limitation Act, 1963 only when a local law expressly or impliedly excludes the application of section 5, then does it stand excluded. The Act is a special

law. In proceeding before the Tribunal the stated law is, that the Tribunal has no jurisdiction to condone delay beyond 90 days as provided under the Act except to the extent provided by section 4 and 12 of the Limitation Act. In a challenge to an order refusing to condone delay the High Court cannot exercise jurisdiction to condone that delay. If the provisions of section 5 is not applicable to an application before the Tribunal, considering section 59 of the Act, will that section also be inapplicable to an application made to the High Court, a Court of Original Civil Jurisdiction. The 'Authority' under the Act exercising quasi judicial powers not being a Court, the Legislature advisedly by virtue of section 60 conferred power to condone delay on the Appellate Authority. Such a power has not been conferred on the Tribunal entertaining an application for reference except to the limited extent of Section 4 and 12 of the Limitation Act. Can section 59 be read as applicable to only quasi judicial authority under the Act and not to the High Court. This exercise would require reading down section 59 in its applicability as only to the Tribunal and not to the High Court. Such an exercise would result in holding that though the legislature in an application to the Tribunal for reference to the High Court has laid down a time limit beyond which an application cannot be

entertained, yet on failure by the Tribunal to make a reference, the legislature in so far as an application to the High Court, though there is a period of limitation set out in section 61(1), yet on sufficient cause been shown, can entertain an application beyond the period of ninety days. This period of ninety days was earlier thirty days and was enhanced to 90 days by the Maharashtra Act 40 of 1969 w.e.f. 1-9-1969. If there had been power in the High Court to condone the delay on showing sufficient cause, what was the necessity of extending the period of limitation from 30 days to 90 days except that one need not show sufficient cause. The fixation of period of limitation to an extent is always arbitrary and on occasions causes hardship. At the same time, the object is to reject Stale claims and in fiscal matters to avoid delays in disposal of matters so that inflow of revenue is not affected. In computing the period laid down in section 55, 57 and 61, the provisions of section 4 and 12 of the Limitation Act, 1963 shall, so far as applicable may be applied. Therefore, though section 5 of the Limitation Act has not been expressly excluded, yet in computing the period under section 61, only section 4 and 12 as far as may be are made applicable. Considering the language of Section 29(2) of the Limitation Act as only Section 4 and 12 are expressly made applicable,

the inference flows that the other provisions are excluded.

10. We may now consider some of the judgments cited for the purpose of answering the proposition.

. In Bansilal Gulabchand V/s. Commissioner of Income-Tax, Bombay (Mofussil) XVI I.T.R. 251, a learned Bench of this Court presided over by Chagla, C.J. was considering the issue whether an application by the assessee before the Appellate Tribunal under Section 66 (3) of the Income Tax Act to condone the delay in filing an application was maintainable. This Court held that the High Court had no power to condone the delay in making an application under Section 66 (1), when there was no power in the Tribunal itself to condone the delay.

. In Commissioner of Income-Tax V/s. Velingkar Brothers reported in [2007] 289 I.T.R. 382 (Bom), the issue before the Full Bench of this Court was whether the High Court exercising jurisdiction under Section 260A could condone the delay. After considering the applicable law in the matter, a Full Bench of this Court was pleased to hold that the following two conditions must be satisfied for application of Section 29(2) of the Limitation Act. They are : (i) there must be a provision for a period of limitation under any

special or local law in connection with any suit, appeal or application; (ii) the said prescription of period of limitation under such special or local law should be different from the period prescribed by the Schedule to the Limitation Act; and (3) there is an additional requirement, viz., that the special / local Act does not expressly exclude the application of the Limitation Act. The word "exclusion" also includes "exclusion by necessary implication." After considering the provisions of the Income Tax Act, the learned Full Bench of this Court was pleased to hold that there is power to condone the delay. Applying this test, the issue was answered by holding that section 5 of the Limitation Act would apply to appeals filed under section 260A of the Income Tax Act. We may note that under the Income Tax Act, there is no provision making applicable any of the provisions of the Limitation Act.

. In Commissioner of Customs (Import) V/s. S.C. Gupta reported in 2007 (207) E.L.T. 377 (Bom.), the issue before a learned Bench of this Court was whether there was power in the Court to condone delay in filing reference application to the High Court for determination of questions of law under the Indian Customs Act. After noting the provisions of the Customs At and the Wealth Tax Act

and various judgments of the supreme Court, the learned Bench was pleased to hold that Section 29(2) of the Limitation Act is attracted when the special or local law does not contain provision so as to exclude applicability of Sections 4 to 24 thereof. The Court held that the Customs Act, 1962 does not contain any provision which excludes applicability of Sections 4 to 24 of the Limitation Act and as such Section 5 of the Limitation Act would be applicable.

11. In Hukumdev Narain Yadav V/s. Lalit Narain Mishra reported in (1974) 2 Supreme Court Cases 133, the issue before the Supreme Court was whether the provisions of Sections 4 to 24 of the Limitation Act were applicable to election petitions, considering Section 29(2) of the Limitation Act. The Election Petition has to be filed in the High Court. Considering the scheme of the Act and various earlier judgments, the Court noted, that it would depend upon the terms of Section 29(2) of the Limitation Act. The Court observed that under this sub-section where a special or local law provides for any suit, appeal or application a period different from the period prescribed therefor by the Schedule, the provisions specified therein will apply only in so far as and to the extent to which they are expressly excluded by such special or local

law. Under Section 29(2) of the Limitation Act, 1908 as amended in 1922, only Section 4, Section 9 to 18 and Section 22 of that Act applied ordinarily unless excluded by a special or local law. The Court then noted the amendment made in the Act of 1963 to Section 29(2) whereby the amended Section incorporates two changes viz. (i) a uniform rule making it applicable to all applications except those mentioned therein, and (ii) to all special and local enactments, unless excluded by any of them. After considering the provisions, the Court observed that the applicability of the provisions (Sections 4 to 24) has, therefore, to be judged not from the term of the Limitation Act but the provisions of the Act relating to filing of Election Petitions and their trial to ascertain whether it is a complete code in itself which does not admit the application of any other provision of Limitation Act mentioned in Section 29(2) of that Act. After, considering various judgments, the Court held that the provisions of Section 5 of the Limitation Act do not govern the filing of election petition or their trial, though in an appellate forum an order of the High Court to the Supreme Court the provisions would apply considering that an appeal is a creature of statute.

. The matter was once again considered in

Lachhman Das Arora V/s. Ganeshi Lal And Others reported in (1999) 8 Supreme Court Cases 532. The Court noted that on its plain reading, Section 81(1) lays down that an election petition calling in question any election on the grounds available has to be presented by any candidate at such election or by an elector within forty-five days from, but nor earlier than, the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates. The Court then observed as under :

> "The Act is a special code providing a period of limitation for filing of an election petition. no period for filing of an election petition is prescribed under the Indian Limitation Act. The Act insofar as it relates to presentation and trial of election disputes is a complete code and a special law. The scheme of the special law shows that the provisions of Sections 4 to 24 of the Indian Limitation Act do not apply. If an election petition is not filed within the prescribed period of forty-five days, Section 86(1) of the Act, which provides that the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117, is straightaway attracted".

In Damodaran Pillai & Others V/s. South Indian Bank Limited reported in (2005) 7 Supreme Court Cases 300, the Supreme Court was considering whether the provisions of Section 5 of the Limitation Act would be applicable to the

proceedings under Order 21 of the Code of Civil Procedure, 1908. The Court observed as under:

> "It is also trite that the civil court in the absence of any express power cannot condone the delay. For the purpose of condonation of delay in the absence of applicability of the provisions of Section 5 of the Limitation Act, the court cannot invoke its inherent power."

. Then the Court observed as under :

> "20. The principles underlying the provisions prescribing limitation are based on public policy aiming at justice, the principles of repose and peace are intended to induce claimants to be prompt in claiming relief.
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> 21. Hardship or injustice may be a relevant consideration in applying the principles of interpretation of the statute, but cannot be a ground for extending the period of limitation."

12. In Fairgrowth Investments Limited Versus Custodian reported in (2004) 11 Supreme Court Cases 472, the Supreme Court while considering the provisions of Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 and considering Section 29(2); whether the provisions of Sections 4 to 24 of the Limitation Act would apply. The powers of a Special Court are exercised by a Judge of a High Court. The Court posed itself a question whether the Act expressly or necessarily excludes the provisions of the Limitation Act ? and answered the issue as under :

"We think it does. The fact that it has provided for a power to condone delay under Section 10(3) of the Act, shows that Parliament had consciously excluded power of the court in relation to Section 4(2). This view also finds support in the decision of this Court in Gopal Sardar v. Karuna Sardar. The statutory provision under consideration in that case was Section 8 of the West Bengal Land Reforms Act, 1955. It was held :

> 'When in the same statute in respect of various other provisions relating to filing of appeals and revisions, specific provisions are made so as to give benefit of Section 5 of the Limitation Act and such provision is not made to an application to be made under Section 8 of the act, it obviously and necessarily follows that the legislature consciously excluded the application of Section 5 of the Limitation Act.'"

. The Court then observed that in Union of India V/s. Popular Construction Co. (2001) 8 SCC 470 the Court had held that the expression 'exclusion' also includes 'exclusion by necessary implication'. Proceeding to answer the issue, the Court held that considering the power to condone the delay under section 10(3) of the Act, shows that Parliament had consciously excluded the power of the Court in relation to section 4(2).

In Union of India V/s. Popular Construction Co. reported in (2001) 8 Supreme Court Cases 470,

the issue was whether the provisions of Sections 4 to 24 of the Limitation Act would apply to a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996. The challenge to an arbitration award under section 34 is before a ‘Civil Court’. The Supreme Court observed as under :

> "Had the proviso to Section 34 merely provided for a period within which the court could exercise its discretion, that would not have been sufficient to exclude Sections 4 to 24 of the Limitation Act because "mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5."
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> The Court then observed as under :
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> " As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the Court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result."

13. Is the Tribunal constituted under the Act a Court for the purposes of applicability of the provisions of the Limitation Act. This issue, in our opinion, stands concluded by the Judgment of this Court in so far as the Act is concurred in Mehta Construction Co. V/s. State of Maharashtra

(supra) which followed the Judgment of the Supreme Court in Nityanand Joshi (supra).

. In Commissioner of Sales Tax, Uttar Pradesh, Lucknow V/s. Parson Tools & Plants, Kanpur reported in 35 STC 413, the issue being considered was whether section 14 of the Limitation Act would apply in proceedings under the U.P. Sales Tax Act. The Court held that proceedings before the authorities under the Sales Tax Act were before Administrative Tribunal and not Courts as contemplated under Section 14 of the Limitation Act and hence section 14 does not apply. The scheme of the Act would disclose that the legislature had deliberately excluded the application of the principles under section 5 and 14 of the Act. Delay in disposal of revenue matters adversely affects the steady inflow of revenues and the financial status of the State. Section 10 was therefore designed to ensure speedy and final determination of fiscal matters within a reasonably certain time schedule. Relying on the observations in Shrimati Ujjam Bai V/s. State of U.P. (1963) 1 S.C.R. 778, the Court quoted with approval, the following observations :

> "The taxing authorities are instrumentalities of the State. They are not a part of the legislature; nor are they a part of the judiciary. Their functions are the assessment and collection of taxes, and in the process of assessing taxes, they

> follow a pattern of action which is considered judicial. They are not thereby converted into courts of civil judicature. They still remain the instrumentalities of the State and are within the definition of 'State' in Article 12."

. Considering these observations, in the case while considering the provisions of U.P. Sales Tax Act, the Supreme Court held that they are merely administrative Tribunals and not Courts and Section 14 of the Limitation Act, therefore, does not on the terms apply to the proceedings before the Tribunal. The Court considering Section 10 of that Act, noted the following scheme :

> The first is that no limitation has been prescribed for the suo motu exercise of its jurisdiction by the revising authority. the second is that the period of one year prescribed as limitation for filing an application for revision by the aggrieved party is unusually long. The third is that the revising authority has no discretion to extend this period beyond a further period of six months, even on sufficient cause shown."

. The Court observed that the three stark features of the scheme and language of the above provision unmistakably show that the legislature has deliberately excluded the application of the principles underlying sections 5 and 14 of the Limitation Act, except to the extent and in the truncated form embodied in sub-section (3-B) of section 10 of the Sales Tax Act. The court then proceeded to observe as under :

> "Delay in disposal of revenue matters adversely affects the steady inflow of revenues and the financial stability of the State. Section 10 is therefore designed to ensure speedy and final determination of fiscal matters within a reasonably certain time schedule."

. The Bench then enunciated thus :

> "Thus the principle that emerges is that if the legislature in a special statute prescribes a certain period of limitation for filing a particular application thereunder and provides in clear terms that such period on sufficient cause being shown, may be extended, in the maximum, only up to a specified time-limit and no further, then the tribunal concerned has no jurisdiction to treat within limitation, an application filed before it beyond such maximum time-limit specified in ;the statute, by excluding the time spent in prosecuting in good faith and due diligence any prior proceeding on the analogy of section 14(2) of the Limitation Act."

14. On a conspectus of the decisions earlier referred to and their ratio, it would be clear that the Authorities constituted under the Sales Tax Act for deciding the tax dues are not Courts, but Tribunals and unless there is an express power conferred by the Act to condone delay or exclude any period of limitation, the Tribunal would not be clothed with the power to condone the delay. In sofar as the power of the Tribunal referring the matter to the High Court beyond the period prescribed by Section 61, it has been held that there is no power in the Tribunal to extend that

period and consequently as there is no power in the Tribunal, there is also no power in the High Court to condone the delay, which the Tribunal itself could not have condoned.

15. After having provided for a reference to the High Court within a time frame of 90 days on refusal to state the case, considering that the High Court is a Civil Court, will the provisions of Sections 4 to 24 of the Limitation Act apply. As noted earlier the period of limitation for an application for a reference was 30 days, which from 1st September, 1969 has been extended to 90 days. The statements of objects and reasons with respect to Clause 8 which was the provision pertaining to extension of limitation, reads as under :

> "As the existing time-limit is found insufficient, this enhances the period from thirty days to ninety days, during which an application may be made to the High Court against the refusal by the Tribunal to refer the matter to the High Court under Section 61."

. The Legislature found that the period of limitation of 30 days was insufficient and extended the period of limitation to 90 days. The object of providing period of limitation in matters pertaining to revenue has already been referred to by us in Parson Tools (Supra). In revenue matters, the object of the Legislature has always been that

recourse to a remedy is to be taken at the earliest, as otherwise it hampers the inflow of revenue which in turn would affect the financial stability of the State.

. It is in this background that we have examined the provisions which we have set out earlier. The adjudicating authorities under the Sales Tax Act not been Courts, the Legislature advisedly under Section 60 has conferred power on the Appellate Tribunal to condone the delay on showing cause. Similarly, under Section 61, power has been conferred on the Tribunal to refer the matter to the High Court within 90 days of the application. Section 59 insofar as Section 55, 57 and 61 has made applicable only the provisions of Sections 4 and 12 of the Limitation Act, 1963 and not the other provisions. The Tribunal, therefore, while sending a statement of case can only consider provisions of Sections 4 and 12 and not other provisions of the Limitation Act. Section 59 does not limit the application of Section 4 and 12 of the Limitation Act only to the Tribunal whilst making a reference but to the entire provision, including an application to the High court. In other words, under the proviso, both the Commissioner and the person can move the High Court within 90 days as set out therein. Could it be the intention of the

Legislature that while conferring power on the Tribunal in referring the statement of case to the High Court, it did not chose to limit the power of the High Court being a Civil Court to condone delay in a case where the application for reference is made to it beyond the period prescribed. In our opinion, this would not be a proper construction of Section 59. Once the Act has specifically made applicable only the provision of Sections 4 and 12 of the Limitation Act, it must be held that it expressly bars the other provisions of the Limitation Act and considering Section 29(2) of the Limitation Act cannot be read to extend the period of limitation by holding that Section 5 to 24 would apply. The Act is a self-contained code. If otherwise the provisions of Section 4 and 12 were applicable, there was no necessity for expressly conferring such a power. We are clearly, therefore, of the opinion that the Act expressly and or by necessary implication excludes the power of the High Court to condone the delay in making application beyond the period of limitation of 90 days, except to the extent of Sections 4 and 12 of the Limitation Act. This being the position, the mere fact that the law was understand otherwise is immaterial. On a reading of the provisions of the Act, the Court has no jurisdiction to entertain an application beyond 90 days, except to the extent of considering

the period under Sections 4 and 12 of the Limitation Act.

16. In the light of above discussion, the notice of motion for condonation of delay of 130 days is not maintainable and consequently the motion is dismissed. As the motion is dismissed, consequently, the application for reference is dismissed as not maintainable.

(F.I. REBELLO, J.)

(J.P. DEVADHAR, J.)